opment. The United States of the Netherlands could pass no law of importance, except by the unanimous consent of the States General. A single voice in the ancient Polish Diet could veto a measure. Does not perhaps something of this sort apply to our jury unanimity?

Whether it be so or not, I for one am convinced that we ought to adopt the other rule in order to give to our verdicts the character of perfect truthfulness, and to prevent the frequent failures of finding a verdict at all.

I am, with great respect, Dear Sir, your obed't,

FRANCIS LIEBER.

NEW YORK, June 26th 1867.

RECENT AMERICAN DECISIONS.

Circuit Court of United States. District of Maryland.

JACKSON INSURANCE COMPANY v. JAMES A. STEWART.

Statutes of limitation are suspended during a state of war, as to matters in controversy between citizens of the opposing belligerents.

This is the rule notwithstanding the statute may have begun to run before the war.

The late conflict between the United States and the states attempting to secede was a civil war, involving the usual consequences and rights of international wars, and among them the suspension of the right to sue as between citizens of the opposing belligerents, and therefore the suspension of the statutes of limitation.

As regards the state of Tennessee the war must be taken to have commenced after the President's Proclamation of August 16th 1861.

On a recovery by a citizen of Tennessee against a citizen of Maryland after the close of the war for a debt due before its commencement, no interest will be allowed for the period covered by the war.

THIS was an action on a bill of exchange drawn in Memphis, in February 1861, at sixty days, on James A. Stewart, payable at the Farmers' and Planters' Bank, in Baltimore, and accepted by Stewart, but protested for non-payment, April 26th 1861.

Plea—Statute of Limitations.

Replications—1st. That war existed when the cause of action accrued, and that three years had not elapsed between the close of the war and the commencement of the suit. 2d. That the President of the United States declared war against Tennessee,

by his proclamation of August 16th 1861, which war continued, until by the proclamation of the President of June 13th 1865, Tennessee was restored to the Union; and that the intervals of time which elapsed from the maturity of the bill to the beginning of the war, and from the close of the war to the commencement of this suit, did not together amount to three years.

To these replications a general demurrer was filed by defendant.

Geo. W. Brown and *Arthur G. Brown*, for plaintiff.

Jervis Spencer, for defendant.

The opinion of the court was delivered by

GILES, J.—Unquestionably in this case *lex fori* prevails, and not *lex loci contractus;* hence the court will apply the law of Maryland, which requires suit to be brought within three years, 1 Maryland Code, article lvii., sections 1 and 2.

In this law there are certain specified exceptions provided for, but it is a mistake to suppose that exceptions may not arise other than those mentioned in the statute. The law always supposes the existence of a party in being capable of suing; and if when the cause of action accrues there is no such party capable of suing, limitations do not begin to run until such a party comes into being. Hence if war had existed at the time this cause of action accrued, limitations would not have begun to run against plaintiff's claim until the war ended.

On the 7th of September 1861, this court decided that the President of the United States had the right, by proclamation, to recognise the existence of a state of war; and that the war, from and after the date of such proclamation, existed between the states mentioned in the proclamation and the rest of the United States. Also, that the late war, when so declared and recognised by the President's proclamation, became a *civil war*, and imposed upon both belligerents all the rights and consequences of such a war. This was one of the earliest decisions in regard to our late civil war, and the principles there enunciated have since been fully confirmed by the Supreme Court of the United States in the Prize Cases, 2 Black 635.

The justices of that court were unanimous as to all the consequences which resulted from a state of civil war, but the three

dissenting judges were of opinion that the war began only after the proclamation of the President of August 16th 1861, passed in pursuance of power conferred upon him by the Act of July 13th 1861.

As regards the state of Tennessee, there can be no doubt that war existed in consequence of the proclamation of the President of August 16th 1861, and not before, as that state was not included in the previous proclamations.

It is a well-settled principle that contracts made before war are only *suspended* by the war, whereas contracts made during war are *void*. This principle is fully recognised by the Supreme Court in regard to our late civil war.

In ancient times private property of alien enemies, and debts of every kind, were confiscated to the state. Happily all this has been changed in modern times; and now, while contracts made during war between alien enemies are absolutely void, being against public policy, private interests are protected, and *bonâ fide* contracts, made before the breaking out of a war, are *sus pended* during its existence, but *revive* at its termination. To the honor of the United States and Great Britain be it said that these rights have always been respected by them.

It has been repeatedly decided by both State and Federal Courts that where, by a legislative enactment, parties are prevented from prosecuting their claims, the interval during which such prevention lasts is not to be counted as part of the time allowed by the Statute of Limitations. Now, the power to make war and peace is by the Constitution of the United States delegated exclusively to the Federal Government; and as during the war the plaintiff, being a corporation of the state of Tennessee, had no right to bring suit against the defendant, who was a citizen of Maryland, the Maryland Statute of Limitations was suspended during such period.

The general rule unquestionably is that where the Statute of Limitations has once begun to run no subsequent disability will arrest it. But we have already seen that a legislative enactment suspends the running of the statute, and the same result follows from the declaration of war by the supreme power of the land.

For it is a well-recognised principle of the law of nations that the right of a creditor to sue for the recovery of his debt is not extinguished by the war, it is only suspended during the war, and

revives in full force on the restoration of peace. A war then certainly existed between Tennessee and the Federal Government, from the President's proclamation of August 16th 1861, and although a civil war, yet, according to the decision of the Supreme Court in the Prize Cases, it carried with it all the consequences and disabilities of a public war, one of which (as we have seen) was the suspension of the right to sue during the war. It follows, therefore, that the plaintiff in this case could have instituted no proceedings in this court until peace was proclaimed by the President's proclamation of June 13th 1865.

This suspension being by the exercise of the paramount authority of the Government, cannot be held to work a forfeiture of the plaintiff's cause of action; but that his right to sue, suspended by the war, revived when it ceased. And as it has not been three years from the maturity of the cause of action to the commencement of the war, and from the termination of the war to the commencement of this suit, this suit is not barred by limitation, and the demurrer is therefore overruled.

The case being then, by agreement, submitted to the court, judgment is entered for the full amount of the plaintiff's claim, together with interest from the 26th of April 1861 to the 16th of August 1861, and from the 13th of June 1865 to date, no interest being allowed for the time during which the war lasted.

The foregoing opinion, although not containing anything of particular novelty, in presenting familiar rules of law, as applicable to alien enemies, is one of some interest, at this particular time, in its application to contracts made with the residents in the states where the rebellion extended, both before and during the existence of the controversy.

We have had no leisure to consider the points with much care, but their obvious reasonableness, justice, and practical character seem to present them in such a light as to preclude all doubt of their soundness. The authorities cited by the plaintiff's counsel in the argument of this case upon the point that the existence of war suspends the operation of the Statute of Limitations so long as the war continues, inasmuch as the remedy is thereby suspended, seem very fully to sustain the proposition: *Wall* v. *Robson*, 2 Nott & McCord 498; *Moses* v. *Jones*, Id. 259; *Nicks* v. *Martindale*, Harper (S. C.) 138; *Ogden* v *Blackledge*, 2 Cranch 272; *Hopkirk* v. *Bell*, 3 Id. 54. Indeed we are not aware that the question really admits of much controversy, as applicable to international wars. And since the late civil conflict practically interrupted all intercourse and all commerce between the different sections, we see no ground upon which, in this respect, any distinction should be made between this and international wars, so long as there existed an actual non-intercourse and a practical impossibility of enforcing the claim.

I. F. R.